1952.

File No. O.L.R.C. Bom 52 pt I

Legal Deptt.

A BRANCH

Subject:— Opinions under the Bombay Land Revenue Code 1879

(for subsequent pps. see pt. II)

P-123/E

File No. O. L. R. C. Bom./52

pt I

Gen. 194

C O N T E N T S.

Legal Department File No. G.L.R.C.Bom./52.

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Office of the Collr.

The second argument put forth by the Collector has no force for it appears from the sanad issued to the occupant that the whole plot was permitted to be used for a non-agricultural purpose. But though it was intended that an area measuring only 40' x 50' should be built upon, this fact has not been specifically brought out in the sanad. Mention has been made in Schedule II that the applicant shall build only upon the area marked A, B C D out of the plot and leave the rest as open space; but clause (3) of the sanad which refers to the Second Schedule has been scored out. Consequently it cannot be said that this is one of the conditions of the sanad. There being thus no restriction on the area to be used for erecting a building, it does not appear it would be feasible to evict the occupant in this case.

J.R. Dhurandhar
4/1.

Recentrapper of Legal Affairs.

U.R. to R.D.No. 52. ; dated the 5th January, 1952.

SNR/14.6.

Legal Department.

The question referred to the R.L.A. for consideration is whether the Malwara system in existance in some of the merged areas of Baroda State can be abolished by executive orders or whether it would be necessary to undertake legislation.

2. Under Chapter X of the Baroda Gramsekari Niyams a fund called the "Malwara Fund" was constituted by debiting a fixed amount out of the land revenue collections in a village 1/3 of the amount was being paid to Patels for meeting contingent expenses such as repairs to shores etc. and the remaining amount went to form the fund and stood in the personal deposit accounts of the Mamlatdars concerned. The Revenue Department thinks that the abolition of the Malwara system amounts to repeal of Chapter X of the Baroda Gramsekari Niyams and has therefore raised the question whether it is necessary to undertake legislation.

3. It does not appear that it is necessary to undertake legislation to abolish the Malwara system. Attention is invited to R.L.A's opinion No. 15481, dated 28th September 1951, where the R.L.A. has pointed out that the Rules in Chapter X of the Gramsekari Niyams cannot be considered as in force in the merged area of Baroda. The Malwara system thus has no statutory existance and it appears that it can be done away with and the Malwara fund credited to Government treasury by mere executive orders. No legislation would be necessary.

J.S. Dhurandhar.
10/1.

Additional Secretary to Government.

U.R. to R.D. No. 260, dated the 10th January 1952.

SHT/14.6.

LEGAL DEPARTMENT.

In this case the permission to construct a weaving factory has been granted by the Collector of Nasik under section 65 of the Land Revenue Code. Section 67 of the Code empowers the Collector to grant such permission on such terms and conditions as may be prescribed by him subject to any rules made in this behalf by the State Government. From the preamble to the order dated 6th September 1944 it is clear that the permission was granted to Shri Patel "on the conditions of a Sanad in Form M to be issued to the occupant" and the conditions enumerated thereunder. It appears that there has been a breach of conditions Nos. 6, 21 and 22 subject to which the permission to build the factory was granted since (1) the road boundary limit has not been observed (2) the buildings and structures have been constructed many in complete diviation of the plan approved by the Collector and, (3) the plot was been sub-divided. The penalty clause 5 in the Sanad in Form M will therefore, be attracted as it was an essential condition subject to which permission was granted (please see Additional Secretary's U.O. to R.D.No. 14034, dated the 31st August 1951). R.L.A's opinion No. 17772 dated the 14th December 1950 has no application to the present case.

J.R.Dhurandhar.
15/1.

Additional Secretary to Government.

U.O. to R.D., No. 561, dated the 15th January 1952.

SNT/14.6.

Legal Department.

It appears that by a lease dated 12-10-1895 between the Secretary of State for India in Council and one Ruttanji Karani land forming part of survey No. 85 of Versova was granted to the latter for a period of 50 years with effect from 1-5-1888 for building purposes. The lease also provided that, if the lessee wanted to obtain a renewal thereof, he should give three calendar months' notice to the Collector of his intention upon which the lessor would agree to grant a new lease for such period on such rent or assessment and on such conditions as the lessor thought expedient. The lessee accordingly made an application for renewal of the lease within the prescribed period. As there were cases of several other leases of this type in Versova, Government in G.R., R.D.No. 5191/38 dated 2-8-1939 issued general orders prescribing the principles on which Government desired to renew the lease. Government also offered to sell the leased lands instead. Under paragraph 6 of that Government Resolution, the lease-holders were to be offered renewal of the lease for the period ending with the period of the lease in the adjoining Khajan lands, i.e., 1950, on payment of rent at 4 per cent. of the revenue free value of the land and subject to the usual building conditions applicable in the Bombay Suburban District. The applicant was accordingly offered the necessary options, namely, the renewal of the lease or the purchase of the land on the aforesaid conditions. But he was not able to make up his mind and entered into unnecessary correspondence with the Collector. Finally the Collector in 1943 gave him a notice that, unless he exercised his option within a week, the land would be resumed by Government. As even after the expiry of the original period of the lease Shri Karani continued to be in occupation of the land, the District Deputy Collector passed an order on 23-5-1944 demanding rent for the perod from 1-5-1888 to 30-4-1945 under the fresh terms sanctioned by Government under the Government Resolution referred to above. The land was

land was considered to have vested in Government after the expiry of the period of the lease. However, after the expiry of the lease the Mamlatdar was receiving rent according to the old lease which was not renewed. This amount which was recovered by the Mamlatdar was deducted from the total amount required to be recovered under the District Deputy Collector's order dated 23-6-1944 and for the balance the Mamlatdar of South Salsette issued a proclamation on 29th May 1946 for the sale of the bungalow as Shri Karani did not pay the amount in spite of notice of coercive measures proposed to be taken for the recovery. Pending the auction sale, Shri Karani has appealed to the Bombay Revenue Tribunal. The Deputy Secretary, Revenue & Department, appears to be of the view that, though Shri Karani continued to pay the rent at the old rate, he might should not be considered in authorised possession of the land as he did not accept the terms offered by the Collector and no final orders were passed renewing the lease and consequently action under section 61 of the Land Revenue Code, i.e., to levy assessment and fine, would be proper and the Collector's order should be modified to that effect. R.L.A. is requested to advise.

2. Shri Karani did apply for the renewal of the lease within the prescribed time; but the terms of renewal offered to him were not accepted in spite of notice by the Collector in 1943. It was, therefore, competent for ~~him~~ the Collector to take action for resumption ~~either~~ of the land. But it appears that the Collector did not take any such action and allowed that rent according to the rate prescribed under the old lease to be recovered from Shri Karani. Under the principle stated in section 116 of the Transfer of Property Act, Government would be deemed to have assented to Shri Karani continuing in possession and the lease renewed from year to year. In the circumstances, Shri Karani's possession of the land even after the expiry of the old lease could not be considered as unauthorised or wrongful,

or wrongful. Section 61 of the Land Revenue Code would, therefore, have no application. The demand by the District Deputy Collector of rent at the revised rate cannot be enforced as Shri Karani has not agreed to the terms of the renewal of the lease offered to him. The action taken ~~xxx~~ by the Mamlatdar for the recovery of the balance by sale of the bungalow is, therefore, ultra vires. The proper course in the circumstances would be to recover the rent at the rate under the old lease and to serve Shri Karani a fresh notice terminating the lease with effect from 1st April 1953 and in case Shri Karani fails to vacate after the expiry of that period, action should be taken by th eviet him under section 79A of the Land Revenue Code.

J.R.Dhurandhar.
18/1.

Additional Secretary to Government.

U.R. to R.D., No. 849, dated the 19th January 1952.

SNR/14.6.

Legal Department.

On an enquiry held by the Prant Officer under section 37(2) of the Bombay Land Revenue Code, he has come to the conclusion that the land in dispute is not a Government land. If so, no appeal by any party could lie against that order. If any party feels aggrieved by that decision of the Prant Officer, it would be open to that party to seek relief in a civil court.

It appears that the Revenue authorities of the State have throughout held that the land in question is a private land. If so, it appears that any decision of the Revenue authorities of the State regarding the rights of the private parties to the land would be ineffective and the proper forum to decide the question as to which party was entitled to the land would be the civil Court. The appeal made to the Revenue Board of Bombay cannot also be transferred to the Bombay Revenue Tribunal since no question of revenue of the State is involved directly or indirectly. Consequently the appeal to the Board of Revenue, Bombay, which is pending, may be allowed to lapse and the Collector to whom an appeal against the order of the Prant officer has been made may be instructed to dispose of the appeal on the ground that since Government's interest is not involved and Government does not claim the land, the appeal itself is incompetent.

J.N.Dharmadhikari,
12 /1.

Additional Secretary to Government.

U.R. to R.D., No. 481, dated the 14th January 1952.

SNT/14.6.

Office of the R.D.O.

In view of the Collector's report dated 27th December 1951 that the persons who objected to the confirmation of the auction sale have not deposited the amounts in spite of notice, it is apparent that the objections raised by them that the bids offered by the auction purchasers are inadequate would not be tenable. The bids offered by the auction purchasers aggregate are more than the upset price fixed by the Collector. One of the conditions of the auction sale of these lands is that the confirmation of the sale would be subject to the sanction of the Collector. Since the Collector is subject to the supervision of Government, it is open to Government to issue a direction to the Collector not to sanction the sale. Consequently, the order issued by Government to the Collector is valid. However, in view of the fact that there has been no irregularity in the auction sale and the bids offered are in excess of the upset price, it is a matter for consideration whether it would not be proper to ask the Collector to confirm the sales.

P.M.LAD.
8/2.
Remembrancer of Legal Affairs.

U.O. to R.D., No. 1995, dated the 8th February 1952

SRT/14.6.

Office of the R.L.A.

Taking over management of Ayubkhan's shares.

Land Revenue Code, 1879. section 144

and

Bombay Tenancy and Agricultural lands Act, 1948. Section 44.

R.L.A's opinion No. 100-Genl. dated 2-5-1933

and

Additional Secretary's Opinion No.17810 dated 9-11-1951.

In his letter No. ADM 92 dated the 15th January 1951, the Collector of Kaira reports:

"As regards estates of Vasan-Virpur (Ayubkhanji Share) the Thakore is in arrears of Rs.5,714-15-6 on account of loan advanced before merger, and he is also in arrears of N.F. of Rs. 1843-4-0. As the above two estates are in arrears of Government dues, these estates could be taken over in management under section 144 read with section 187 of the Land Revenue Code or under any other law in force in the Bombay State in consultation with the R.L.A". The R.L.A. is, therefore, requested to advise whether Ayubkhanji's share above referred to can be taken over under Government management under the Land Revenue Code as suggested by the Collector or under section 44 of the Tenancy Act (page 57 ante).

2. The Thakore, Ayubkhan, it appears, has executed an agreement in form III. Under the terms of that agreement he is entitled to the full ownership, use and enjoyment of all other properties vesting ~~xxx~~ in him including the superior proprietary rights in all lands in his estate subject to the payment of land revenue to the Government of Bombay (vide clause (d) of the Agreement). Under clause (e) of the same agreement it is provided ~~that~~ until the land revenue payable by him to the Government of Bombay is fixed according to law, he shall continue to pay the same amount of total annual contribution as he was liable to pay to the Government of India immediately before the merger on account of the administration of his estate together with any arrears that were then due from him. Section 144 of the Bombay Land Revenue Code, 1879 provides that if owing to disputes amongst the sharers, or for any

any other cause, the Collector shall deem that there is reason to apprehend that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of the village to be attached and taken under management of himself or any agent whom he appoints for the purpose. The Collector in his letter at page 27 has reported that the Thakore is in arrears of Government dues; but that would be no ground for assuming management under section 144. Management under that section can only be assumed when there is an apprehension that land revenue payable will not be paid as it falls due. Sections 140 to 144 provides precautionary measures to be taken to ensure the recovery of land revenue if there is any reason to apprehend that the land revenue would not be recovered in the ordinary course (Cf. B.L.A.'s opinion No.100-Confl. dated 2-5-1933). The Collector does not appear to have any such apprehension and in the circumstances, attachment under section 144 would not be feasible. It is doubtful whether the arrears of M.F. of Rs. 1843-4-0. can be considered as arrears of land revenue recoverable under the Bombay Land Revenue Code. If they are so recoverable, it would be open to the Collector to take the necessary steps authorised by section 150 of the Land Revenue Code, for their recovery. Besides the other arrears relate to the loan for the recovery of which section 144 cannot be invoked. It would not also be possible to assume management under section 44 of the Bombay Tenancy and Agricultural Lands Act, 1948. That section provides for taking over management when the State Government is satisfied that on account of the neglect of a landholder or disputes

between - .....

between him and his tenants, the cultivation of his estate has seriously suffered, or than it appears to it that it is necessary for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture. The Collector has reported that there are no disputes between the landlord and the tenants and it does not appear that any of the other conditions are satisfied in this case. In the circumstances it would not be possible to take action under section 44 of the Bombay Tenancy and Agricultural Lands Act (Cf. Additional Secretary's opinion No. 17610, dated the 9th November 1951.).

P.M.LAD.
11/2.

Remembrancer of Legal Affairs.

U.O. to R.D.No. 24/6, dated the 14th February 1952.

SRT/14.6.

Legal Department.

The R.L.A. is requested to advise whether on either of the following grounds, it would be possible to remove the objectionable structures:

(1) That it is only through a clerical mistake that clause (3) in the Sanad had been scored out; and

(2) That the Sanad having been signed by the Mamlatdar is not binding ~~xxxx~~ on the Government.

2. It appears that neither of the contentions would be correct. It would be seen from the various copies of the Sanad in the case papers (including copies of the draft sanad) that clause (3) has been scored out from all of them. A perusal of the order passed by the Collector of Poona on 21-6-1939 shows that the permission was granted to the occupant on the following conditions:

(i) That he pays the non-agricultural assessment at two pies per sq. yards on the land used for non-agricultural purpose;

(ii) that he pays the measurement charges;

(iii) that he executes the sanad under section 67 read with section 48(2) of the Land Revenue Code.

It is true that under this Order permission was granted to construct the building strictly in accordance with the plan sanctioned by the Collector; i.e. the occupant was authorised to erect buildings, only on the portion of the plot marked A.B.C.D. But apparently the Collector's order did not lay down a condition that if structures were erected beyond that portion, the occupant would render himself liable to eviction from the plot or the structures would be liable to be removed. It would therefore be difficult to contend that clause (3) had been omitted from the sanad through a clerical mistake.

3. The other argument put forth that is that the sanad having been signed by the Mamlatdar and not by the

Collector -.....

Collector is not binding on Government. The R.B. in para 4 of their office note have referred to the R.D. G.R. of 1937 which stated what officers of Government were empowered to execute contracts on behalf of Government. But this G.R. has no application to the execution of sanads granted for conversion of lands to non-agricultural use. The G.R. specified, as required by sub-section (3) of section 175 of the Government of India Act, 1935, the officers of Government who were empowered to execute 'contracts and assurances of property' on behalf of the Governor. The sanad in question cannot be said to be a contract or grant. It embodies conditions on which permission under section 65 of the Bombay Land Revenue Code, 1879, is granted. Merely because the sanad was signed by the Mamlatdar for the Collector would not render it invalid. If the sanad was actually issued in pursuance of the Collector's order granting the required permission - as appears to be the case here - the fact whether it was signed by the Mamlatdar and not by the Collector would not make any difference. For the same reason the A.L.A.'s opinion of 1947 referred to in the R.D. note which related to a case of a lease of land would have no application to the present case.

J.R.Dhurandhar.
25/2.
Additional Secretary to Government.

U.B. & to R.D.No. 3093, dated the 26th February 1952.

SWI/14.6.

Office of the S.L.A.

In order to enable the S.L.A. to give a definite opinion in the matter the Revenue Department is requested to forward to this office the papers underlying G.R., R.D., No. 4821/39, dated the 17th June 1941 whereunder the permission was granted by Government to lease certain Barabhi Watan lands in Malsiras taluka. The R.D. is also requested to state whether the Company or the Watandars had applied for this permission and whether S. No. 104 of Khadki was included in the application for the permission.

P.P.Katarki.

For Superintendent of Legal Affairs.

U.R. to R.D., No. 1/872, dated the 18th September 1951.

SMT/14.6.

Land Encroachments.

Lease of Survey No.104 of Khshiv taluka Malsiras.

Survey No. 104 of Khshiv, taluka Malsiras was originally Government waste land. It was granted to the Ramoshis and Mahars in 1940 on inalienable tenure and a Kabulayat in Form K(1) under rule 37(4) of the Land Revenue Rules was taken from them on 11th April 1941. One of the conditions of the Kabulayat was that it was not to be leased without the previous sanction of the Collector. It appears that by G.R.(R.D.) No. 4591/39, dated 10th June 1941 the lease of certain Ramoshi watan lands in the Malsiras taluka was sanctioned. The said resolution does not include S.No. 104 of Khshiv. It , however, appears that mahars and Ramoshis have passed Kabulayats to Malshandnagar Industries Ltd. in respect of several lands including S.No. 104 of Khshiv. The Company has produced a copy of the Government resolution alleged to have been supplied to them by the Mamlatdar regarding the sanction of Government for the lease of the Ramoshi watan lands. The said copy purports to include S.No.104 of Khshiv. The Company has been in possession of the said land since 1941 and contends that it has spent about Rs.10,000/- for the development and improvement thereof for making it fit for sugarcane cultivation. The question for consideration is whether the land S.No. 104 can be resumed or forfeited by Government, and if so, whether Government will be liable to pay compensation to the Company for the improvement made. It is clear from the papers that the lease to the Company by the mahars and Ramoshis was unauthorised and was in contravention of the Kabulayat. No previous permission of the Collector was obtained, nor does the G.R. of 1941 include the said land. The Collector is unable to state how it was included in the copy of the resolution supplied by the Mamlatdar to the Company. It is true that the said copy fraudulently includes S.No. 104 of Khshiv along with other lands. But there is nothing to show that the Company or any of its servants or agents

was .....

was a party to the fraud, The fraudulent inclusion of the said survey number may have been the result of a fraudulent act on the part of the Ramgabi and mahars in collusion with the Mamlatdar. [redacted] Such fraudulent act of the Mamlatdar, being unauthorised, would not bind Government, (I.L.R. [redacted] 268), and it would be open to Government to resume or forfeit the land . But as in consequence of such resumption or forfeiture the Company would be deprived of the possession of the land, it would be entitled to compensation for the improvements made by it in the land in good faith (see Bhaumapragada v. Secretary of State (1925) A.I.R. (Mad.) 963). It would , therefore, be advisable to compromise this dispute by an amicable settlement.

J.R. Dharandhar.
29 /1.

Additional Secretary to Government.

U.R. to R.D., No. 1996, dated the 29th January 1952.

SNT/14.6.

Land Revenue.

It appears that city survey No. 402/1 of Igatpuri was leased to Shrimati Tajibai Marwadi for a period of seven years with effect from 1st August 1931, and the period of the lease was further extended upto 31st July 1945. But after the expiry of the period of the lease the village officers continued to accept rent and no steps were taken for the eviction of the lessee. In 1950 the Deputy Engineer, Nasik Southern Sub-Division, noticed the erection of buildings within the area prohibited by the ribbon development scheme. Subsequently, on the report of the District Deputy Collector, the Collector of Nasik passed an order on 16th April 1951 levying a fine of Rs. 100/- under section 61 of the Bombay Land Revenue Code on the ground that the occupation of the land by Shri Marwadi after the expiry of the extended period of the lease in 1945 was unauthorised. The Collector further directed the removal of the structures erected on the plot. Against this order Shri Marwadi has made an appeal to Government in which he has laid emphasis on the fact that, though the period of the lease had expired, the village officers continued to receive the rent from him and consequently the levy of fine is unauthorised. The Collector has reported that, as the site was leased by the City Survey Officer, the collection of rent by the village officers without the authority of the City Survey Officer was unauthorised and further the village officers in collecting the rent did not act as authorised agents of Government and, as such, in view of the Revenue Tribunal's decision in the Review Application No.191 dated 19th November 1949, the fine levied by him under section 61 of the Land Revenue Code is justified. The Revenue Department has requested the L.L.A. to advise on the following points:

(1) Whether the Collector's contention that, as the village officers could not accept the rent of the land in a city surveyed area without the orders of the City Survey Officer, the collection of rent .....

of rent by the village officers was unauthorised is correct;

(2) Whether the village officers in collecting rent from the lessee could be considered as authorised agents of Government and, as such, the lease would be deemed to beextended from year to year.

It is true that the land leased out in the present case is in a city surveyed area. But there does not appear to be any authority for holding that the village officers could not accept the rent of the land without the orders of the City Survey Officer. The Collector in his report at page 15 ante has stated that the site was leased out by the City Survey Officer and the village officers are not the proper revenue officials whose acts would bind the City Survey officer in respect of city survey matters without an express order from the City Survey Officer to the village officers to that effect. The Collection of rent is not one which pertains to any City Survey matter. The lease was executed in the name of the Governor and by the Mamlatdar of Igatpuri. It does not appear that the City Survey Officer had anything to do with the lease. Even under the Bombay Land Revenue Rules, the authority competent to lease Government land is the Collector and not the City Survey Officer even though the land is in a city surveyed area. The village officers are authorised to collect Government rent due from the landholders. It, therefore, follows that the contention of the Collector that the village officers could not ~~withhold~~ collect rent of the land without the authority of the City Survey Officer does not appear to be tenable.

It is apparent from the facts of this case that the lease expired on 31st July 1945 and thereafter the lessee continued to be in possession ~~of~~ of the land without the lease being renewed. Under the principle embodied in section 116 of the .....

of the Transfer of Property Act, if a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee or otherwise assents to his continuing in possession, the lease would be deemed to be renewed from year to year or month to month according to the purpose for which the property was leased. "The assent of the lessor may be inferred from the acceptance of rent or a demand for rent or a suit for rent or an agreement as to an item in an account for rent or the grant of an invalid lease. But these circumstances only create presumption which may be rebutted. Thus the lessor may show that he accepted the rent ignorant of the fact that the tenancy had terminated" (Mulla's Transfer of Property Act, p.736-37). Shri Marwadi was a tenant holding over for five years after the expiry of the lease on 31st July 1945. Under condition (1) of the lease the rent is to be paid in advance every year. Presumably, therefore, during all these years, the lessee must have been paying rent eve y year in advance. The village officers recovered the rent and credited it to Government treasury. This collection of rent could ordinarily have been noticed by the Mamlatdar when the collection of the rent was extended for a period of five years. If the Mamlatdar or the Collector had no desire to assent to the continuance of the lease, they could certainly have taken objection to the collection of the rent and should have either ordered the village officer to stop collection or rent or the refund thereof. Nothing of that sort was done during all these five years. Even when the Collector directed the levy of penalty under section 61 of the Bombay Land Revenue Code on the ground that the occupation of the land by the lessee after 1945 was unauthorised, he did not direct the refund of the rent.

There is.....

There is also nothing on record to show that the village officers accepted the rent in ignorance of the fact that the tenancy had terminated. In these circumstances, it appears Government could be fixed with the knowledge of the collection of the rent and of the appropriation thereof towards its revenue and consequently, the principle stated in section 116 of the Transfer of Property Act would apply and the possession of the lessee would be deemed to be authorised. The levy of fine under section 61 of the Land Revenue Code would not, therefore, be lawful.

It is true that the Bombay Revenue Tribunal in the Review Application No. C-181 dated 15th November 1949 have taken the view that the Talathi was in no sense the agent of the Collector and the mistaken acceptance of rent by the former would not legalise the applicant's possession. The facts in that case were: The lease was determined by efflux of time on 31st July 1944. The lessee was continued in possession and paid the rent on 3rd July 1945 purporting to be rent of the land for the year 1944-45. He made an application for renewal of the lease on 30th July 1945. The Collector treated his possession during the year 1944-45 after the expiry of the lease on 31st July 1944 as unauthorised and levied a fine under section 61 of the Bombay Land Revenue Code. The Bombay Revenue Tribunal upheld the order of the Collector on the ground that the talathi who accepted the rent was in no sense the agent of the collector and the mistaken acceptance of rent by the former would not legalise the lessee's possession. It is apparent that the facts of that case are different from the facts in the present case. The Talathi had accepted the rent only a few months before the Collector passed the order levying a penalty under section 61 of the Bombay Land Revenue Code, treating the possession as unauthorised. In other words,

In other words, the fact that the Collector passed the order within a short time after the acceptance of rent by the Talathi amounted to repudiation by the Collector of the collection of rent by the Talathi as authorised. In the present case the rent was collected annually for a period of five years and neither the Mamlatdar nor the Collector, who had an opportunity to know the collection of the rent, never repudiated it. Under these circumstances, it appears that the decision of the Bombay Revenue Tribunal could be distinguished on facts and each case is to be determined on the particular facts thereof.

J.R.Dharamdhar,
4/3.

Additional Secretary to Government.

U.R. to T.D., No. 3578, dated the 5th March 1952.

SNT/14.6.

Officers of the R.D.A.

The Revenue officers in rejecting the claim of Shri V.V. Pandit relied upon the Kabjapatti dated 17th December 1939. It is true that it mentions that the possessions of the land had been taken from three persons viz. (1) Shri Waman Vishnu Pandit, (2) Shri Jivaji Laxman Phalnikar and (3) Shri Babaji Bapoo Rane; but it has not been signed either by Shri Pandit or Shri Phalnikar. It was made in their absence and has been signed by Panchas. The case of the appellant furthe is that the portion of the S.No. Alleged to be in the occupancy of Shri Phalnikar has been purchased by him. By a sale deed dated 1st September 1943 Shri Jivaji Laxman Phalnikar ~~has transferred~~ sold his interest in S.No. 93 of Naghali (then in the possession of Government) along with other lands of his ownership to one Gangadhar Krishana Lakhande; who in his turn transferred the land in favour of Shri Waman Vishnu Pandit, the Appellant (vide the sale deed dt. 22/9/1944 at p.p 25-35 of File 4b) On that date Shri Pandit would thus appear to be the owner of the whole S. No. excluding the portion in possession of Shri Rane. The interest of Shri Phalnikar having thus devolved on Shri Waman Vishnu Pandit, he was the person to whom possession of the land should have been handed over . But actually possession of a portion of the land was handed over to one Shri Alurkar who posed as the agent of Shri Phalnikar. As stated above Shri Phalnika had left no interest in the land. He had no authority to give a pow of attorney in favour of Shri Alurkar as alleged, But actually no such power of attorney seems to have been issued for none seems to have been produced by Shri Alurkar. The Collector states that the subordinate revenue officers handed over possession of part of the land to Shri Alurkar on behalf of Shri Phalnikar without ascertaining whether Shri Alurkar held a valid power of attorney. It would no seem from the facts mentioned above that the possessio of portion of S.No. 93 had been handed over to Shri Alurkar through misrepresentation. There would therefore appear no

there appear no objection to dispossessing Shri Alurkar and handing over the land to the custody of Shri Pandit who appears to be the person duly entitled. The view expressed by the Collector in his letter at pp.41-45 ante appears to be correct.

P.M.BAD.
11/3.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 3626, dated the 11th March 1942.

SRT/14.6.

Legal Department.

It appears that by an order No. 3174/49-E dated the 4th July 1951 Government had directed that in all cases in which the guarantee periods in respect of non-agricultural assessment at Ahmedabad have expired non-agricultural assessment should be revised and fixed at the current rates (that is 1935 rates), and guaranteed for a period of 2 years in the first instance, and that non-agricultural assessment at the revised standard rates to be sanctioned thereafter should be levied after that short period of guarantee has expired and guaranteed for thirty years under rule 87, Land Revenue Rules. The Deputy Secretary, Revenue Department, considers that this order of Government is contrary to rules 86A and 87 of the Land Revenue Rules both of which are mandatory and the guaranteed period should not ordinarily be less than 30 years in the Bombay Suburban District, and 30 years elsewhere. He has, therefore, proposed that in the Bombay Suburban District where the non-agricultural assessment is to be revised the assessment may be levied at ~~xxxxxxxxxxx~~ ad hoc rates on an annual basis in each case without any guarantee ~~xxxxxx~~ both as to the rate and period, or alternatively, to guarantee the present assessment for the full term of 50 years in the case of Bombay Suburban District and 30 years in the case of Ahmedabad and thereafter revise the same by legislation, if any relief is to be given to the holders. The R.L.A. is requested to advise which of the courses is legally feasible.

2. The levy of an ad hoc rate on an annual basis without any guarantee both as to the rate and period would not be legally feasible ; for, under sub-section (2) of section 52 of the Bombay Land Revenue Code 1879, the assessment ~~xx~~ is to be revised in accordance with the rules made in this behalf by the State Government and the assessment so revised shall be fixed each time for such period not

exceeding .....

exceeding 99 years as the State Government may, by general or special order, specify. The non-agricultural assessment leviable under Chapter XIV of the Land Revenue Rules is to be levied in accordance with the rates specified either in Rule 31 or Rule 32 of that Chapter. The revision of the assessment will, therefore, have to be made according to the Rules and it will have to be fixed and guaranteed for a certain period. The ad hoc rate cannot be considered to be in accordance with the Rules.

Rules 86A of the Bombay Land Revenue Rules provides for graduated levy of non-agricultural assessment. Sub-rule (1) provides that if the rate of the revised non-agricultural assessment does not exceed 2 pies per square yard the whole of such revised non-agricultural assessment shall be levied from the year in which the revised non-graduated levy of non-agricultural assessment under sub-rule (2) comes into operation only when the revised non-agricultural assessment exceeds 2 pies per square yard. Under sub-rule (2) this graduated levy of non-agricultural assessment will be spread over a period maximum of 11 years thereafter the full revised non-agricultural assessment would be levied. Rule 87 clause (a) provides that the period for which the non-agricultural assessment is to be fixed shall ordinarily be 30 years except in the case of Bombay Suburban District where on account of special conditions the period shall ordinarily be 50 years. The word 'ordinarily' would give discretion to Government to fix the period even for a lesser term if circumstances justify it. It is true that Rule 86A (2) contemplates a period of more than 11 years for the graduated levy of non-agricultural assessment, but it it be less than the period of 11 years it would be more in the interest of the occupants themselves; for, by that time the full limit

of the .....

of the revised non-agricultural assessment would not be reached i.e. the occupants would be paying something less than the revised non-agricultural assessment. It appears, therefore, that even in cases falling under rule 86A(2) there would be no legal objection to fixing the period for less than 11 years, and such period may be even for 2 or 3 years. Consequently, the objection raised by the Deputy Secretary , Revenue Department, to the Government orders dated the 4th July 1951 in connection with the revision of non-agricultural assessment at Ahmedabad, is not correct. The proposal made by him that the full revised non-agricultural assessment should be levied and gaurenteed for the period of 30 or 50 years as the case may be, under Rule 87 and thereafter Government may by legislation reduce the levy of non-agricultural assessment, would involve complications. The safer course would be to continue the present rate until Government has revised the standard rate.

J.R. Dhurandhar.
11/3.

Additional Secretary to Government

U.R. to R.D. No. 3831, dated the 11th March 1952.

SNT/15.6.

Legal Department.

Under section 56 of the Bombay Land Revenue Code 1879, arrears of land revenue due on account of land by any landholder is a paramount charge on the holding and every part thereof, failure in payment of which makes the occupancy or alienated holding liable to forfeiture. Section 136 makes the occupant primarily liable for the payment of the land revenue including arrears of land revenue due in respect of the land. The expression "land revenue" has not been defined in the Code. But taking it in its plain meaning the expression has been interpreted by the High Court to mean "money payable to Government in respect of land" (Secretary of State vs. Govardhandas 33 Bom. L.R. 815; vide also Gupte's Land Revenue Code, 3rd Ed. p. 14). The difference between the current occupancy price and the price already paid by the society at the time the grant was made would be money payable in respect of land and would be recoverable as an arrear of land revenue. The presumption made by the Revenue Department is correct. The recovery of full occupancy price will, however, strengthen the claim of the society for the payment of compensation at full market value in case the lands are acquired under the Land Acquisition Act (vide para 3 of the opinion at pp. 113-115 ante).

J.R.Dhumadhar.
14/3.

Additional Secretary to Government

U.R. to R.D.No. 9960, dated the 14th March 1952.

SMT/15.6.

Office of the S.L.A.

Though Government can dispossess Shri Alurkar of the land and hand over possession of the same to Shri Pandit it would not be possible for Government to do anything to secure the mesne profits to Shri Pandit. His only remedy will be to file a suit against Shri Alurkar in a proper court of law.

P.H.MAD.
16/4.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 5469, dated the 12th April 1952.

SM/15.6.

Legal Department.

In his previous opinion No.6194 dated 17-4-51, E.I.A. opined as follows:

> "The grant does not contain any conditions subject to which the land should be utilised for non-agricultural purposes. But the memo of conditions agreed to and signed by the original occupant prescribed certain conditions one of which provided that no subsequent additions to the building shall be made without the Collector's sanction. It is true that this condition was not included in the sanad but the Collector's order granting non-agricultural permission makes clear the conditions on which the permission was granted and the non-inclusion of these conditions in the sanad would not make any difference. The original occupant had also signed an agreement subject to these conditions. Since the conditions attached to the occupancy while granting permission would run with the land, the transfer of the land from the original occupant to the present occupant is subject to these conditions."

It now appears that the original occupant, Shri Kanga, applied for permission to convert a portion of his land measuring 1 guntha and eight annas for the building purpose, and the Collector of Nasik under his endorsement No.9279 dated 8-12-1915 granted permission only with respect to that area. The permission so granted was subject to "the conditions already agreed upon", that is, subject to the memo. of conditions signed by Shri Kanga on 18-9-1913. The permission granted by the Collector on 8-12-1913 was subsequently modified and under the Collector's order No. 1168 dated 20-1-1916, Shri Kanga was permitted to use a place of land measuring A 1 - G 5 from the same survey number to non-agricultural purposes "on the conditions referred to in the accompanying memo." The Collector directed that in token of his having accepted these conditions, the memo should be returned duly signed. The S.D., however, states that "the case papers do not show that any such memo was signed by the occupant in 1915 as per the Collector's order". Presumably the conditions must be the same as those contained in the memo of conditions signed by the occupant on 18-9-1913. But since the memo of conditions referred to ....

referred to in the Collector's order No. 468 dated 20-1-1915 is not available, it is not possible to say whether the conditions were at all accepted by the occupant, Shri Kanga, and were signed in token of his having accepted them. In the absence of such a document, it is not possible to state as to what were the conditions subject to which the permission was granted by the Collector in 1915 and which the occupant was bound to comply with. Since, as stated by the Collector, the occupant in his statement dated 16-3-1950 has agreed to pay the penalty for breach of the conditions the matter should be amicably settled and the Collector be instructed to impose reasonable penalty for the breach of conditions.

J.R.Dhurandhar.
16/5.

Additional Secretary to Government.

U.R. to R.D., No., 6277, dated the 17th May 1952.

SMT/15.6.

LEGAL DEPARTMENT.

The A.L.A. in his opinion No. 15481, dated 28-9-1951 has held that the Baroda Village Service Rules so far as they are connected with hereditary Watans of village services may be deemed to be in force but that the provisions of the rules which pertain to conditions of service of village servants and their powers and duties stood repealed of the merger of the Baroda State into the Province of Bombay. It was held that on the merger of the Baroda State i.e. on 30-7-1949, the rules made under section 241 of the Government of India Act, 1935 for canon servants became applicable to the Baroda Village servants also.

In the said opinion, the A.L.A. has explained the legal position as it stood on 30-7-1949. Under Government Resolution in the Revenue Department No.2786/49-I, dated 18-8-1950, the Government have made special rules governing affected Baroda Village Servants. The Resolution is not affected by the said opinion of the A.L.A. as that opinion simply explains the legal position as it stood on 30-7-1949. The Government Resolution in question attracts article 309 of the Constitution. The effect of the Resolution is of making a special provision with regard to conditions of service in respect of Village Servants in the areas of the former Baroda State. It is competent for Government to make such a provision under the proviso to article 309 of the Constitution.

J.R.Dhurandhar.
16/9.

Additional Secretary to Government.

U.H. to R.D.No. 8276, dated the 17th May 1942.

SNT/15.6.

Legal Department.

From the order of the Mamlatdar dated 21st June 1951, it appears that he granted assistance for recovery of rent due to Shri Bhanabhai, by treating it as an application under section 86 of the Bom. L.R. Code. The provisions of sections 86 and 87 are, however, to be read along with section 85. Under sub-section (1) of section 85, every Superior holder of an alienated village or of an alienated share of a village, in which there are hereditary patels and village accountants shall receive his dues on account of rent or land revenue from the inferior holders through such patel and accountant. Sub-section (2) provides that where such patel and accountant fail to recover on behalf of such Superior holder any sum due and payable to him on account of rent or land revenue, such superior holder shall, with the previous consent of the Collector be entitled to recover his dues direct from the inferior holders. Under section 86, superior holders shall, upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders etc. in the same manner as prescribed in Ch. XI for the realisation of land revenue by the State Government. Section 87 provides the procedure to be followed by the Collector for holding summary inquiry and for passing an order for rendering assistance for recovery of the amount. Rander is not an alienated village and consequently the Mamlatdar was not legally competent to pass an order under section 86 rendering assistance to the Superior holder for recovery of rent in respect of S.No. 272 from Shri Bhagwan. The Mamlatdar's order dated 21st June 1951 and the order dated 9th August 1951

made by .....

made by the Prant Officer in appeal may, therefore, be xxxxx annulled under section 211 of the Bombay Land Revenue Code by the Government.

J.R.Dhurandhar.
23/5.

Additional Secretary to Government.

U.R. to R.D., No. 8692, dated the 24th May 1952.

SNT/15.6.

Office of the R.L.A.

Eviction of refugees from Government plots.

The persons who have occupied the plots without permission are clearly trespassers; and it would be open to the Collector to evict them summarily under section 29A of the Bombay City Land Revenue Act, 1876, if the lands are within the City of Bombay, or under section 61 of the Bombay Land Revenue Code, 1879, if they are outside the City. Even ~~when~~ under the general law a trespassers can be evicted without notice and without resource to a court of law. In the case of persons who were given permits and who have committed a breach of the terms of the permit, similar action would be possible on termination of the permission granted to them. The position of these persons is that of licensees, and on the licence being revoked, their occupation of the plots would be unauthorised; and there would then be no objection to taking action against them under section 29A of the Bombay City Land Revenue Act, 1876, or section 61 of the Land Revenue Code, 1879, as the case may be. If any attempt is made to offer obstruction, they can also be prosecuted under section 120 of the Bombay Police Act, 1951.

P.M.RD.
18/4.

U.R. to R.H.D.No. 6022, dated the 21st April 1952.

SMT/15.6.

Local Department.

Rule 17 of the Bombay Civil Services Rules referred to in the Revenue Department note provides that unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of Government and he may be employed in any manner required by the proper authority, whether the services required of him are such as would ordinarily be remunerated from general revenues or from a local fund. This rule lays down a general principle in regard to the duties of Government servants. But that principle is subject to any provision made otherwise. Village accountant are appointed under section 16 of the Bombay Land Revenue Code, 1879, and their duties are prescribed in that section as well as section 17. Their duties are restricted to keeping accounts and registers. These provisions would take the case of village accountants out of the general principle laid down in Bombay Civil services Rule 17. Section 16 of the Bombay Land Revenue Code, 1879, requires village accountants to perform duties as prescribed by that Code or by any other law for the time being in force. In order to achieve the object in view it will be necessary to amend the Essential Supplies (Temporary Powers) Act, 1946, under which the Bombay Foodgrains Levy Order, 1949, has been issued.

J.N.Dhurandhar.
4/6.

Additional Secretary to Government.

U.R. to C.S.D. No. 9418, dated the 6th June 1952.

SNT/15.6.

Legal Department.

Levy of water rate in Inam villages.

R.L.A's Opinion Nos. 783 dated 27-1-1942 and 2055 dated 1-3-1948.

The question raised in this case is whether in an inam village, the inamdar is entitled to levy water charges or water assessment in respect of water utilised by inferior holders. In this case, it is urged that bandharas or dams are constructed by inferior holders. In all unalienated villages in which water vests in Government, Government is entitled to charge water assessment under section 55 of the Bombay Land Revenue Code. But this right is based on the fact that the said water vests in Government. In G.O.No. 11926 dated 11th December 1915, it was held that in an inam village to which the Survey Settlement has been applied, the inamdar is in law entitled to such right. In R.L.A. Opinion No. 783 dated the 27th January 1942, the R.L.A. considered that it was not necessary to decide the point. This was no doubt not quite satisfactory. But in a case which was the subject matter of R.L.A's opinion No. 2055 dated 1st March 1948, it was assumed that the inamdar had a right to charge himayat or water assessment. The question will really depend on the fact whether the right to water for which water assessment is being charged vests in the inamdar under the terms of the Sanad or as an incident of the tenure. Merely because in unalienated villages, Government have made a concession in favour of occupants not to charge water assessment in respect of water vested in them, it does not follow that the holders of alienated villages can be compelled to give similar concession in their villages. The suggestion that the investigation of the sanads and Dumaldars' rights will not be useful is not correct. The whole question has however become academic. In all Land Tenure Abolition Act, a provision has been inserted on the lines of Section

[redacted]

37 of the Bombay Land Revenue Code providing that rights to natural waters would vest in Government on the abolition of the tenure. A provision to the same effect has been inserted in the Bombay Personal Inam Abolition Bill in clause 7. Moreover under section 25A of the Bombay Irrigation Act, 1879, which was enacted by Bombay Act XXX of 1951, power has been taken by Government to compel the holder of an alienated or a talukdari village to carry out repairs and maintain bandharas. No action, therefore, seems necessary on the point raised in this case.

J.R.Dhurandhar.
21/5.

Additional Secretary to Government.

U.R. to R.D.No. 6584, dated the 22nd May 1952.

SRT/15.6.

Office of the R.L.A.,

Under section 46(2) of the Indian Income Tax Act, 1922, the Collector on receipt of the certificate from the Income Tax Officer can no doubt proceed to recover from the assessee the amount specified in the certificate as if it were an arrear of land revenue. The words "as if" make it quite clear that the amount is not the same as an arrear of land revenue. The effect of this provision is not to convert income tax into an arrear of land revenue due in respect of the land which may be brought to sale for the realisation of income-tax but merely to extend the procedure available for the recovery of arrears of land revenue to the recovery of income tax. That being so, the imposition of a penalty under section 148 of the Land Revenue Code is clearly illegal. It has been judicially laid down that the penalty contemplated by this section can only be in respect of an instalment of land revenue proper (see Secretary of State for India v. Gedvala 29 Bom. L.R.1350; and Secretary of State for India v. Parikh, 33 Bom.L.R. 615). If any penalty must at all be imposed, that can best be done by the Income Tax Officer himself under sub- section (1) of section 46.

P.M.LAD.
6/6.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9537 , dated the 7th June 1952.

SMT/15.6.

Local Departments

Land measuring 1 acre 13 gunthas out of Survey Nos.630 and 636 of Ichalkaranji belonging to Shri P.N.patil was acquired by the Jahangirdar of Ichalkaranji in the years 1910 and 1925. Correspondence regarding the amount of compensation went on for several years; and ultimately the Prime Minister of Kolhapur by his order dated the 29th June 1944 directed that land measuring 2 acres and 20 gunthas out of survey No. 586 and 13 gunthas out of survey No.584 should be given to Shri Patil in exchange as compensation. Both the lands acquired and the lands given in exchange were agricultural lands. It appears that Shri Patil converted the use of the lands by constructing a bunglow and other structures in survey No. 586-B without permission and selling the remaining agricultural land by dividing it into residential plots. The Collector of Kolhapur in his report at page 39 ante has raised the question what action can be taken against Shri Patil for unauthorisedly converting the use of the land. The Kolhapur Land Revenue Code, 1945, was extended to the former Ichalkaranji Jaghir by Kolhapur Government Notification dated 25th August 1946. The bunglow in question was erected by Shri Patil in 1945 and the plots were sold in the years 1948, 1950 and 1951. The Collector proposes that so far as the former case is concerned Nazarana and enhanced assessment may be recovered from Shri Patil, and so far as the latter cases are concerned they may be dealt with according to section 66 of the Code. The Revenue Department, however, considers that as the unauthorised non-agricultural use in respect of all the land was not detected and proceedings with during the former State regime action under section 66 of the Code can be taken and proceedings held against Shri Patil under the provisions of that section in respect

of .....

of all these cases of unauthorised use. The R.L.A. is requested to advise whether this course is free from legal objection.

2. The Kolhapur Land Revenue Code, was enacted in 1945. It is stated in the introduction to Volume I of the Kolhapur Vathukums that before that the Bombay Land Revenue Code was applied in spirit. The Kolhapur Code was first applied to the area of the Ichalkaranji Jahagir by the Darbar Notification dated 25th August 1946. The Collector also reports the provisions of the Code were in force in the area of the Jahagir in spirit. In Ramappa Vyankappa vs. Laxman, 52 Bom.L.R. 839 at page 841 the Bombay ~~High~~ High Court agreed with the observation made by Madgavkar J. that "either an Act, in any or all of its sections, applies, or it does not. To apply it in the spirit but not in the letter is beyond the power of the Courts." Even assuming the Bombay Land Revenue Code or the Kolhapur Land Revenue Code was applied to the Ichalkaranji Jahagir, it would not follow that sections 65 and 66 of the said Code would apply to the land in question. These provisions apply to the land held by an occupant. Land held by the Jahagirdar or any transfered from him of any land comprising his Jahagir would be alienated land and not the land held by an occupant. Moreover, a perusal of the order passed by the Prime Minister of Kolhapur in 1944 granting the lands in exchange to Shri Patil shows that no conditions were attached to the grant. The lands were agricultural lands, but there was no restriction on their use ~~xx~~ for a non-agricultural purpose. As stated above unless the lands were granted or held on occupancy tenure referred to in the Bombay Land Revenue Code and adopted in the Kolhapur Code, section 65 of the Code which permits an occupant to convert agricultural land into non-agricultural land cannot apply. Moreover, the use of a land for non-agricultural purposes has to be regarded as a whole. Since

Since as stated above the provisions of the Kolhapur Land Revenue Code did not extend to the area of Ichalkaranji Jahagir then, and there is nothing to show that Shri Patil held the lands as an occupant it would not be possible to proceed against Shri Patil under section 66. The course suggested at C in the Revenue Department office note at page 47 ante does not appear to be feasible. The Collector of Kolhapur states that in the Ichalkaranji Jahagir, it was the practice for the Jahagirdar to levy nazarana on the conversion of the use of the land. It is not known what was the law on which such practice was based. Whatever may be the basis of the said practice, on the merger of the Kolhapur State, Government do not succeed to the rights of the Jahagirdar and cannot claim to recover nazarana amounts which the Jahagirdar used to levy.

J.R.Bharadhar.
17/6.

Additional Secretary to Government.

U.R. to R.D., No. 10098, dated the 17th June 1952.

SRT/15.6.

OFFICE OF THE R.L.A.

The view taken by R.D. is correct. The land encroached upon being private land of the Thakor, it is for him to evict the encroachers through a court of law and it would not be lawful for the Collector to resort to section 202 of the Land Revenue Code to evict the encroachers.

P.M.LAD.
18/6.

U.R. to R.D.No. 10312, dated the 20th June 1952.

SNT/15.6.

Legal Department.

In memorandum No. T.N.C. dated 21st December 1951 sent by the Prant Officer, Bhiwandi Prant, Thana, it is stated that as there is no provision in law that a superior holder should be allowed to bid at auction sales held for the recovery of his arrears, no permission was granted to the applicant in the present case to bid at the auction sale. It is added that under the rules for the execution of civil courts' decrees it is open to the decree holder, with the permission of the court, to bid at the auction, but that there is no such provision in the Land Revenue Code to allow the decree holder to bid at the auction. Section 86 of the Bombay Land Revenue Code no doubt provides that superior holders are entitled to assistance for the recovery of rent or land revenue payable to them by inferior holders under the same rules and in the same manner as prescribed in Chapter XI for the realisation of land revenue except that contained in section 137. Section 155 of the Code provides that the Collector may cause the right, title and interest of the defaulter in any immoveable property other than the land on which the arrear is due, to be sold. It is true that neither the Land Revenue Code nor the rules made thereunder contain provisions similar to thosein Order XXI Rule 72 of the Civil Procedure Code regarding the decree holder being permitted to bid at an execution sale. But in the absence of such a provision it cannot be held that a superior holder whose dues are to be recovered is prohibited from bidding. In Ladurem v. Ramram 52 Bom. L.R. 263 it has been held that in the similar case of sale for the recovery of dues belonging to Government, there is no provision in the Code precluding Government from purchasing the property of the defaulters. Even Order XXI Rule 72 of the Civil Procedure Code does not prohibit

a decree .....

a decree holder from bidding at an execution sale. It is not obligatory on him to obtain the permission of the court. A sale held without such permission is not a nullity (see Rai Radha Kisan v. Mahesh Sahay L.R. 45. I.A. 312). It is voidable at the option of the judgment debtor. But in Lekuram's case the court observed that Government should not exercise this right to the detriment of the defaulter and should purchase at a nominal bid. This danger is greater in the case of an superior holder. Although, therefore, according to strict law, a superior holder cannot be precluded from bidding at a sale held for the recovery of his dues, it will be desirable to make provision in the Land Revenue Code or the rules providing for proper safeguards before he is allowed to bid.

J.R.Dhurandhar.
9/5.

Additional Secretary to Government.

U.R. to R.D. No. 7899 , dated the 12th May 1952.

SNT/13.6.

Office of the R.L.A.

As the validity of the Bombay Paragana and Kulkarni Watan (Abolition) Act, 1950, has been challenged in the High Court, Bombay, it would be desirable to await the decision of the High Court. The papers are therefore returned to the Revenue Department with a request to refer them back to the Remembrancer of Legal Affairs after the High Court delivers its judgment in the pending applications.

R.T.Katarki,

For Remembrancer of Legal Affairs.

U.R. to R.D., No. 17572, dated the 6th November 1951.

SMT/15.6.

Legal Department.

Bombay Land Revenue Code. Sects. 74 & 76. Sale before regrant.

The only question raised for the R.L.A.'s consideration is how to enforce the payment of 50% of the sale proceeds (purchase money) from Shri R.R. Kulkarni holder of survey No. 44/2 of Vadgaon Sahani, who sold it after reliquishing it on 7-9-1950 without waiting for the regrant of the land.

2. The condition of payment of 50% of the purchase price under G.R.R.D., No. 4119/49 dated 22-1-1951 could have been enforced if the land had been re-granted to Shri R.R. Kulkarni on such condition before he actually sold it. But Shri Kulkarni did not wait for the regrant of he land and sold it immediately on reliquishment of the land. Consequently, the condition under G.R.R.D.No. 4119/49 dated 22-1-51 regarding the payment of 50% of the purchase price cannot be enforced. However, it appears that Shri R.R. Kulkarni sold the land immediately after the relinquishment under section 74 read with section 76 of the Bombay Land Revenue Code. On such relinquishment Shri R.R.Kulkarni could claim no further right in the land unless it was re-granted to him. As no such re-grant was made to Shri Kulkarni he could be said possess no interest in the land and could, therefore, convey no title to his purchaser. Action may, therefore, be taken to evict the purchaser. It would be open to him to sue Shri R.R. Kulkarni for refund of the purchase money on the ground that by the sale-deed Shri Kulkarni could convey no title to him of the land. R.D. may, however, consider whether this would be a fit case in which the land may be granted to the tenant on payment of occupancy price.

J.R.Dhurandhar,
21/6.

Additional Secretary to Government.

U.L. to R.D., No. 10433, dated the 23rd June 1952.

SMT/15.6.

Office of the R.L.A.

It appears that an amount of Rs. 1162-2-0, plus interest is due to be recovered from Messrs.J.M. Kalla and Sons, Camp Belgaum, as exercise arrears. Shri J.M. Kalla has since expired and has left a balance at the Imperial Bank of India, Belgaum. The question raised for the R.L.A's consideration is whether the dues can be recovered from the balance standing to the credit of Shri J.M. Kalla at the Imperial Bank of India under section 154 of the Bombay Land Revenue Code.

2. The arrears due from Messrs. J.M. Kalla and Sons are, no doubt, recoverable as arrears of land revenue, but under section 154, the Collector can cause the recovery by distraining and selling the moveable property of the defaulter. The word 'distrained' in section 154 means "seized" (see section 165, para 2, which clearly states that the sale of the property seized requires to be pre-claimed.) "Money is not distrainable unless it is in a bag or in such a close or sealed receptacle that it can be identified." (see Hallsbury Vol. X, page 464). The balance standing to the credit of the deceased J.M.Kalla with the Bank is not such as can be identified. Consequently, it cannot be distrained for the satisfaction of Government dues under section 154 of the Bombay Land Revenue Code. The proper course is to file a suit and get the balance attached which should be done immediately. The view taken by the District Government Pleader, Belgaum, is not correct.

P.M.LAD.
27/6.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10718, dated the 28th June 1952.

SRT/15.6.

Legal Department.

Land admeasuring 24 acres and 10 gunthas out of S.No. 122B of Khamburda has been granted to the Vijaynagar Co-operative Housing Society on payment of occupancy price at the rate of Rs. 5,000/- per acre subject to the conditions laid down in Government letter No. 1856/13/45, dated 6th December 1946. The Society has entered into an agreement in form H-H in the Land Revenue Rules as provided for under condition (viii) in the said letter. There is no condition in the agreement in regard to the time-limit within which buildings shall be eracted. In these circumstances the question referred to the R.L.A. for advice is whether in view of rule 43(2) of the Land Revenue Rules it would be possible for Government to lay down such a condition after the agreement has been executed.

2. Sub-rule (2) of rule 43 of the Land Revenue Rules provided inter alia that in special cases of grants of Government land for building purposes an agreement in form H-H shall be taken. In such cases the rule further provides that the Collector may subject to any general or special orders of the Commissioner annex such addition al conditions to, or omit, or vary such of the conditions in the agreement as he thinks fit. As agreement concluded on behalf of Government and executed in Form H-H is clearly and equally binding both on Government and the applicants and neither can vary it without the consent of the other party. The concluding portion of sub-rule (2) of rule 43 gives to the Collector an opportunity (in cases in which an agreement in Form H-H is to be taken) to annex additional conditions or to omit or vary such of the conditions as he thinks fit. But this has to be done before an agreement has been executed. After the conclusion of an agreement it would not be possible for

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Government to lay down an additional condition (about time limit) unless the other party to the agreement agrees. The view expressed in the concluding portion of Secretary R.D 's note is correct.

J.R.Dhurandhar.
10/7.

Additional Secretary to Government.

U.R. to R.D. No. 11489 , dated the 11th July 1952.

SNT/15.6.

OFFICE OF THE R.L.A.

The view taken by the Deputy Secretary, Finance Department is correct. The over-drawn amounts of pay cannot in the absence of an undertaking be recovered as arrears of land revenue under the Bombay Land Revenue Code, 1879.

P.M.LAD.
5/7.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 11757, dated the 16th July 1952.

SMT/15.6.

Legal Departments.

Bombay Land Revenue Code. Secs. 48(4), 66, Breach of conditions of Sanad.

In this case a Sanad under section 48 of the Bombay Land Revenue Code for non-agricultural use was granted to Shri Harilal Manekilal on 18th July 1925. Conditions 2 and 3 of the said Sanad provide that the plot shall be used for residential building of a substantial and permanent discription and shall comply with building regulations contained in second schedule to the Sanad. Condition (6) provides that the Collector may, without prejudice to any other penalty to which the applicant may be liable under the provision of the Code direct the removal or alteration of any building or structure erected or used contrary to the provisions of this grant etc. Condition (7) provides that save as herein provided the grant shall be subject to the provisions of the Code. Under condition 1 enquired in Schedule II he has to build on the area measuring 421 sq. yeare earmarked out on the plan leaving the rest as open space. It is clear from condition 5 that the building erected shall be used for residential purposes only. Condition 7 provides for 10 ft. margin on the South side of the plot. It appears from the papers that the present occupant had not only violated the marginal conditions but he had also erected new constructions on the plot which are being used as godown for his shop. Thus he is using the building for non-residential purposes in breach of condition 5 in Schedule II appended to the Sanad read with conditions (2) and (3) of the Sanad. Action under section 66 would not be feasible as non-agricultural permission has already been granted in this case. As pointed out by the District Government Pleader, Thane, action under section 48(4) of the Code cannot also be taken. The proper course would be to take action under condition (6)

of the same by ordering the removal of the offending additional structure (see R.L.A's opinion No. 1948/3 dated 2-2-51, No. 8000 dated 22-9-48 and No. 15655 dated 8-11-50).

J.R.Dhurandhar,

5/6.

Additional Secretary to Government.

U.R. to R.D. No. 9501, dated the 7th June 1952.

SMT/15.6.

Legal Department.

The view taken by R.D. is correct. The holders of lands at Sirsyandi, Taluka Phaltan, have been recognised by Government to be occupants of the land under section 217 of the Bombay Land Revenue Code. In Bilali v. Machadeo (A.I.R.-1933 Bombay 168) it was held that "there is no accurate definition of the holders of land in an alienated village and the meaning varies according to the context." Section 86 of the Bombay Land Revenue Code, 1879, entitles superior holders to assistance in recovery of dues from inferior holders and these dues may be on account of rent or land revenue. The inamdars of the village would, therefore, be considered as superior holders while occupants would be considered as inferior holders for the purpose of section 86. Consequently, the inamdars of the village would be entitled to assistance under section 86 for the recovery of land revenue from the occupants of the lands.

J.R.Dhurandhar.
19/6.
Additional Secretary to Government.

U.R. to R.D., No. 10296, dated the 20th June 1952.

SM/15.6.

Legal Department.

These papers relate to the question of regularising the levy of non-agricultural assessment in the areas of the merged territory of Baroda under the Bombay Land Revenue Code, 1879. In this connection, the Revenue Department has raised the following points for the consideration of the Remembrancer of Legal Affairs.:-

(1) How revision of such assessment should be undertaken.

Whether steps can be taken under the existing provisions of the Land Revenue Rules, 1921.

(2) How the building restrictions according to Bombay System should be applied and agreements in the prescribed forms be executed.

(3) How the problem of authorised and unauthorised additions and alterations in a sanctioned non-agricultural plot should be dealt with.

Point (1).- From the Revenue Department note at pages 51 to 53 ante it appears that the Revenue Department has raised this point mainly with regard to urban areas. The Revenue Department seems to be under the impression that with regard to the levy of non-agricultural assessment in urban areas, no guarantee as to the period for the levy of such assessment was given under the Baroda Land Revenue Code or the Rules thereunder. This impression does not appear to be correct. Under the Baroda System, non-agricultural assessment was leviable -

(i) under the Baroda Land Revenue Code and the Rules thereunder, and

(ii) under a special set of rules known as "the Rules relating to the assessment of revenue on lands used for non-agricultural purposes, 1930.

The said special rules were applicable to those villages and town which were industrially developed and to which the

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rules were made applicable by the Huzur (Government) It is presumed that the urban areas to which the Revenue Department refers in its note are areas governed by the said special rules. From rule 5(2) of the said rules, it appears that at the time of publishing a notification applying the rules to any place, it was necessary to specify in such notification the priod for which the non-agricultural assessment was to be levied. It is presumed that various such notifications applying the rules to different places must have been issued from time to time by the former Government of Baroda and the period for the levy of assessment must have been specified in such notifications. Rule 11(4) of the said special rules contains provision with regard to the lands on which non-agricultural assessment was levied prior to the commencement of the Rules. The rule provides that such assessment shall continue to be levied without alteration till the expiry of the period for which he settlement was made. The provisions of the Rules, therefore, clearly indicate that in respect of non-agricultural assessment the period, for which such assessment would continue without any alteration in the middle, was fixed. If any such period was fixed, the existing rates would continue till thes expiry of such period. The assessment would not automatically be governed by the existing provisions of Chapter XIV of the Land Revenue Rules, 1921. It would be necessary to make special provision for the purpose. But therefore taking any decision in the matter, it appears to be necessary to collect information as to the places to which the said special Rules were applied by the former Government of Baroda and what period was fixed in the respective notifications for the purpose of the levy of non-agricultural assessment in each of the such places.

Point (2).- As regards lands appropriated during Baroda regime for non-agricultural use either for the building purposes or for some other purpose, the Revenue Department proposes to require the occupants to execute agreements in

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Form M or N under the Bombay Land Revenue Rules. The conditions imposed under the Baroda law may be taken to have been imposed under the Bombay Land Revenue Rules, but it would not now be legally feasible to require the occupants to execute agreements in Form M or N. In the case of new permissions, the provisions of the Land Revenue Rules, 1921, would, however, be applicable.

Point (3).- It appears that according to the Baroda System, unauthorised construction in lands which were governed by the Special Rules of 1930, were subject to the levy of additional assessment calculated at the rate of $\frac{1}{10}$ non-agricultural assessment of 1½ times the agricultural assessment, whichever is greater plus fine. Authorised construction was subject to the levy of additional assessment at the said rate. In respect of lands governed by the Baroda Land Revenue Code and the rules thereunder, the rate of non-agricultural assessment varied from 1½ times to 10 times the assessment. The Revenue Department in its note at page 57 proposes that in the case of authorised additions and alterations, the extra assessment levied under the Baroda law may be continued treating the same as a condition attached to the tenure and that the case of unauthorised construction should now be governed by the Bombay Land Revenue Code and the Rules thereunder. The view taken by the Revenue Department appears to be correct. As regards unauthorised constructions, it would be competent to the Collector to proceed under section 66 of the Bombay Land Revenue Code.

J.R.Dharamdhar.
14/7.

Additional Secretary to Government.

U.R. to R.D., No. 11749, dated the 16th July 1952.

SMT/25.6.

The petitioners in support of their appeals have produced the 4 documents at pages 61-69 ante. The first document at page 62 ante is a receipt given by the Mamlatdar of Bavda to Shri Lele acknowledging the sum of Rs. 270-15-9 on account of the revenue. The reference in the receipt to the word "Khoba" does not amount to Shri Lele being deemed to be a Khatedar. The other document (p. 63 ante) is a copy of the order issued by the Chief of Bavda on 25th May 1925 directing that the annual kabulayat should be issued in the name of the applicant's son as requested by him. Page 65 ante is an extract from the ledger account. Lastly the document at pages 67-69 ante is the order passed by the Jahagirdar on 11th June 1912 on Shri Thakur's application that the annual kabulayat should be entered into with him. These documents are not sufficient to substantiate the appellants' contentions. The petitioner have not been able to produce any record to show that they held the villages as occupants, nor have they produced any proof to prove the Makta tenure as alleged. As against this the Collector has pointed out that there are some cases of sales effected in the Wadi (Vide pp. 283, 291, 299 and 307 of File II) by the cultivators. If the cultivators were mere tenants as alleged by the appellants they would have had no right to sell their holdings. Again from the copies of the orders issued by the Jahagirdar in 1884 and 1885 at pages 449-451 of File II it is seen that the Jahagirdar directed that in respect of those years the revenue should be collected by sending a clerk. No Kabulayats should be executed with Shri Lele. All this goes to show that the appellants merely entered into a contract with the Jahagirdar to collect the revenue in respect of the village. They had no occupancy rights

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in the village. In these circumstances, the appeal made by Shris Thakar and Lale may be rejected as proposed by the Revenue Department. However as the order which the Collector has passed on 24th November 1949 should be in fact have been made by Government the position should be regularised by Government itself passing a fresh order as suggested by the Revenue Department.

P.M.LAD.
17/7.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 11691, dated the 18th July 1952.

SMT/16.6.

Local Department.

Bombay Land Revenue Code, sections 66 and 79A Cancellation of grant.

It appears that C.T.S.Nos. 1801 to 1804 of Kopargaon were sold in 1941 to Ganpat Tatyaji Deokar in public auction subject to certain building conditions. He executed a Kabuliyat on 13-11-1942 embodying those conditions regarding the area to be built over, the marginal limits, etc., and also that no building should be constructed without the prior approval of the site plans of the building. He submitted plans which were approved by the Collector on 8-11-1942. In the meantime he had sold the land to one Shri Rama Patil who constructed certain structures in 1943 in conformity with the plans. Subsequently he added certain structures in 1947 which contravened the conditions on which the grant was made. Instead of constructing over one-third area only, he has built over two-thirds area and has also violated marginal conditions. A notice was issued to him under section 202 of the Bombay Land Revenue Code asking him to remove the additional structure within 15 days. He agreed to do so but asked for time. Subsequently, however he has represented to Government that the removal of the additional structures would put him to a loss of Rs.1,000/- and has requested that he may be permitted to retain them on payment of a fine. The District Deputy Collector who inspected the buildings has recommended that the additional structures may be allowed to stand on payment of a find of Rs.1,000/-, to which Shri Patil has no objection. The Collector has raised the following points :

(1) whether the grant can be revoked and the land forfeited; or

(2) whether the additional structures can be ordered to be removed or can be removed through Government agency for the breach of the conditions of the grant.

Revenue Department considers that Shri Patil cannot be evicted or compelled to remove the alterations and additions erected unauthorisedly in the absence of a specific condition

in the agreement or annex to that effect. However, that Department considers that the grant can be revoked on payment of compensation to Shri Patil. The R.L.A. is requested to advise whether the grant can be revoked or whether the Collector should be asked to regularise on payment of a compensation of Rs., 1,000/- by Shri Patil.

The R.L.A.'s opinion No.6355 dated 30th November 1937 which has been relied on by Revenue Department has no application to the present case as in that opinion the question related mainly to the forfeiture of occupancies for the breach of the terms of conditions imposed under section 66 of the Bombay Land Revenue Code. In the present case the land has been sold subject to certain conditions and the Kabulayat executed by the grantee specifies explicitly those terms and conditions. Evidently these terms and conditions would be deemed to be annexed to the tenure under section 68 of the Bombay Land Revenue Code and even though there is no provision in the Kabulayat for forfeiture or revocation of the grant for the breach of any of these terms and conditions, it appears that section 79A of the Bombay Land Revenue Code can be resorted to for on the breach of these terms and conditions the grantee would be deemed to be unauthorisedly occupying or wrongfully in possession of the land. It would , therefore, be competent for Government to revoke or cancel the grant. On such revocation Government can take possession of the land along with the structures and as advised by the R.L.A. in his opinion No. 8540 dated 31st May 1951 the unauthorised structures however cannot be removed.

If Government proposes to regularise the position on payment of a compensation amt.of Rs.1.000/- by the occupant, there can be no legal objection to such a proposal (see Additional Secretary 's opinion No.6930 dated 1st May 1951).

J.R.Dhurandhar,
12/1.
Additional Secretary to Government.

U.S. to R.D.No.479, dated the 12th January, 1952.

Office of the R.L.A.

It appears that the Government of Baroda advanced a loan of Rs. 40,000/- to the Thakore of Thara under an agreement dated 6-11-1944 on condition that the amount should be paid in 13 annual instalments of Rs.3077/- with interest. The Thakore has defaulted in payment of certain instalments and the question raised for the R.L.A.'s consideration is whether under the agreement the state of the Thakore can be attached for the satisfaction of the instalments due from him.

2. The conditions of the grant of the loan are embodied in a letter addressed to the Special Officer,, Baroda State. Condition 5 of the conditions provides that the instalment of principal and interest will be first charge on the revenues of the Taluka. Condition 8 provides that in the event of failure ~~xx~~ to pay one instalment in full and the accured interest by the date so specified in condition 3 above, the Special Officer may ~~at~~ his discretion place under attachment the whole of the estate or any of its villages till the loan is repaid in full. There is no provision in any of these conditions providing for the recovery of the instalments or any part thereof as arrears of land revenue. Consequently section 144 of the Bombay Land Revenue Code, which provides for the attachment of a village or share of a village on the apprehension that the land revenue payable in respect of any such village or part thereof, is not likely to be paid, will have no application to the present case. The agreement between the Thakore and the Special Officer, Baroda State, appears to create a charge on the revenues of the villages of the Thakore. If the attachment of villages is to be enforced for the recovery of instalments in arrears, it will have to be done through court, and it would be legally feasible to get the arrears satisfied out of the revenues of the village

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without bringing to sell either the village or the revenues thereof. (See Rewabhai vs. Bhaman, A.I.R. 1939 Nagpur 132).

P.M.,BAD,
19/6.

Remembrancer of Legal Affairs

U.R. to H.D., No. 10288, dated the 20th June 1952.

SM/16.6.

Legal Department.

The Collector in his letter dated the 23rd April 1952 states that the sand was brought by floods and is in the nature of a sudden accretion. It is not, therefore, an alluvial deposit to which the holder will be entitled under section 46 of the Bombay Land Revenue Code.

J.R.Dharamdhar.
23/6.

Additional Secretary to Government.

U.B. to R.D., No. 10486, dated the 25th June 1952.

SHT/16.6.

Legal Department.

The question raised for consideration is whether in view of the fact that no sanad has been issued to the occupant as was assumed yesterday, it will be possible to evict him from the plot having erected unauthorised structures beyond the area of 40' x 50' referred to in the order of the Collector of Poona dated 21-6-1939. Though that order refers to the occupant erecting a building on the area mentioned in the plan sanctioned by the Collector, the order does not lay down a condition that if any structures are erected beyond the portion A B C D shown in the plan the occupant would render himself liable to eviction from the plot. As at the time of granting the permission in this case no such condition was attached, no steps can now be taken for the eviction of the occupant and the fact that no sanad has been issued would make no difference. In view of clause (1) of the Collector's order dated 21-6-1939, it may however be possible to levy non-agricultural assessment and fine under section 66 of the Land Revenue Code which may be considered by the Revenue Department.

J.R.Dhurandhar.
14/8.

Additional Secretary to Government.

M.R. to R.D., No. 19531, dated the 19th August 1952.

SM/16.6.